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SIERRA NEVADA BREWING CO.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CROWN BEVERAGES, INC., a Nevada
corporation,

Plaintiff,

v.

SIERRA NEVADA BREWING CO., a
California corporation; DOES I through X,
inclusive,

Defendant.

Case No. 3:16-cv-00695-MMD-VPC

**SIERRA NEVADA BREWING CO.'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

1 **I. INTRODUCTION**

2 Sierra Nevada Brewing Co. respectfully requests that the Court deny Crown Beverage
3 Inc.'s motion for a preliminary injunction, because Crown failed to establish the likelihood of
4 success on the merits of its claims and the possibility of suffering irreparable harm. Sierra
5 Nevada terminated Crown's Distributor Agreement in large part based on its long history of poor
6 performance of market standards and its leadership's open, often drunken and profane hostility
7 toward Sierra Nevada employees and others. Sierra Nevada documented its concerns with
8 Crown's serious misconduct and met with its management to discuss them. While Crown would
9 briefly improve its performance and vow to change its behavior, Crown would invariably soon
10 revert to its problematic ways. These recurring problems are unique to Crown and create an
11 intolerable working relationship, which Crown's own industry expert voluntarily described as
12 "poisoned" and "deteriorated." A brewer and its distributor must have a positive working
13 relationship to execute an effective market strategy, working hand-in-hand to nurture retail
14 relationships and build community rapport in a very competitive market. In one shocking display
15 of bad judgment or aggression after another, Crown has destroyed its relationship with Sierra
16 Nevada since Jaye and Paul Bond incrementally acquired majority ownership in last three years.
17 By November 2016, Sierra Nevada had ample "good cause" to end its relationship with Crown,
18 and Crown failed to justify the "extraordinary and drastic" remedy of an injunction.

19 First and foremost, Sierra Nevada cannot in good conscious send its employees to Crown
20 because it has an unsafe, intolerable work environment. Almost three years ago, Sierra Nevada
21 asked Crown's president, Paul Bond, to quit intimidating Sierra Nevada's employees and to
22 ensure Crown has no firearms present at meetings. Sierra Nevada employees observed Mr. Bond
23 intoxicated and firearms on Crown's premises. In that dangerous environment, he would berate
24 them and others with vulgar, hostile language, often in response to Sierra Nevada's concerns
25 about negative feedback from the market on Crown's poor performance. His own loyal people
26 reluctantly admitted that they have seen him drink during business hours and heard him holler
27 obscenities at people like "I am going to make your ass bleed" and tell racist jokes. They have
28 also seen him yell and swear at Sierra Nevada employees, such as Tim Day and Bryan Rosario,

1 who work tirelessly in Crown's market to improve Sierra Nevada sales. Other beer suppliers and
2 retailers have had similar problems at Crown, characterizing Mr. Bond as "toxic" and "volatile."

3 Furthermore, Crown fails to quote any of its contractual duties to Sierra Nevada in its 30-
4 page motion, because Crown has breached almost all of them. For starters, Crown failed to
5 provide a competitive level of beer distribution service, as its contract requires. The largest
6 retailers in the market all agree that Crown has long been the worst distributor in town. Some
7 have called it "Clown Beverages." Far from having "meticulous precautions" in place consistent
8 with industry standards, retailers have uniformly complained about Crown's display execution,
9 sales efforts, and delivery service, including serious issues with out-of-code (OOC) and out-of-
10 stock (OOS) beer. When these retailers would question Crown's performance levels, Crown was
11 often times nonresponsive or, even worse, Mr. Bond responded with profanity and aggression.
12 For example, when Safeway's then-liquor manager, Becky Denoyer, brought to Crown's
13 attention that its merchandiser forged her signature on an activity log purporting to reflect work
14 done by Crown at Safeway, Mr. Bond called her, in slurred but unmistakable words, a "lying
15 fucking bitch." She also heard from a former Crown employee that Mr. Bond referred to her as
16 "the fucking cunt." Mr. Bond almost came to blows with, threatened, and berated others in the
17 market, including retailers, often while drunk.

18 Mr. Bond runs Crown and admitted it is "the face of the Sierra Nevada brand" in the
19 Northern Nevada market. Crown's industry expert said the distributor's relationships with its
20 retailers are "everything," because "they decide whether you live or die." To that end, Sierra
21 Nevada's contract prohibits Crown from harming Sierra Nevada's image, which Mr. Bond
22 admitted is a reasonable term because he, too, conceded that retail relationships are critical. To
23 protect its large market share, Sierra Nevada has sent employees into the prime Northern Nevada
24 market to build positive relationships and resolve problems caused by Crown. Yet Crown credits
25 itself with strong sales growth, which the leading retailers like Raley's and Safeway attributed not
26 to Crown's often shoddy work but to Sierra Nevada's strong brand and marketing efforts.

27 Indeed, contrary to Crown's contention that Sierra Nevada had no issues with Crown
28 other than a "petty personality qualm" with Mr. Bond "akin to a playground dispute," Mr. Bond

1 admitted that Sierra Nevada raised many issues with Crown's performance during the November
2 15 meeting with Crown. His memory comports with Sierra Nevada's termination letters, which
3 document multiple grounds for good cause. Thus, Crown's *only* proposed cure – to try to end
4 direct contact between Sierra Nevada and Mr. Bond – was no cure at all, because it failed to
5 address Crown's performance or safety issues and, as a practical matter, he owns and runs Crown
6 as the face of Sierra Nevada in the market. There is no work-around Mr. Bond.

7 In an ordinary circumstance, a company like Crown would have simply fired a "toxic" and
8 "volatile" president like Mr. Bond during its 60-day cure period that expired on January 8, 2017,
9 arguably solving the safety and reputational problems. Indeed, Crown's expert, the former
10 President of the Nevada Beer Wholesalers Association, owns a distributorship and admitted that
11 he would fire a manager who cursed at a retailer or supplier because that conduct is
12 unprofessional and intolerable. But despite a contractual and statutory duty to obtain Sierra
13 Nevada's approval of any change in Crown's ownership, Crown failed to disclose to Sierra
14 Nevada that Crown's prior owners, Ginocchio family members, sold their majority interest to the
15 Bonds over the last three years, which evidently emboldened Mr. Bond. Sierra Nevada also
16 learned during discovery that from at least 2007 until sometime in 2013, Crown lacked the
17 licenses required to lawfully sell beer – "*slipped through the cracks*" – again contrary to its
18 contractual and statutory requirements. Here, too, Crown failed to disclose this breach to Sierra
19 Nevada. Neither breach requires Sierra Nevada to provide Crown a cure period before
20 terminating it under Nevada law. Nor does Nevada law require Sierra Nevada to accept a cure
21 when Crown's offenses are incurable by their nature, because they implicate fundamental issues
22 of reputation, safety, and trust. There is, at bottom, no basis to provide Crown any relief.

23 **II. THE PRELIMINARY INJUNCTION STANDARD**

24 "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be
25 granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v.*
26 *Armstrong*, 520 U.S. 968, 972 (1997).

1 **III. NEVADA’S “GOOD CAUSE” AND CURE LAW**

2 Nevada law permits a supplier to terminate a distributor if the supplier has “good cause”
3 or the distributor commits certain actions, including the failure to obtain approval of ownership
4 transfers or to maintain liquor licenses. NRS 597.155, 597.160. Certain grounds for termination
5 provide the distributor a cure period and others do not. And some breaches are incurable.

6 **A. A Supplier May Terminate a Distributor for Good Cause**

7 “Good cause” includes a “[f]ailure by a wholesaler to comply substantially with essential
8 and reasonable requirements imposed on him or her by a supplier, or sought to be imposed by a
9 supplier.” NRS 597.133. While the statute recognizes that franchise “agreements” may be
10 “written or oral” (597.130), the definition of “good cause” does not include the term “agreement.”
11 Rather, “good cause” includes a failure to comply with “requirements” that are “sought to be
12 imposed” by the supplier. Thus, a supplier may have “good cause” to terminate a distributor
13 based on “requirements” not expressly included in an agreement. NRS 597.130, 133. In
14 addition, “good cause” includes “[b]ad faith by the wholesaler in carrying out the terms of the
15 franchise agreement.” NRS 597.133.

16 In the year before Sierra Nevada and Crown executed their 1986 Distributor Agreement,
17 this District Court rejected an alcohol distributor’s motion for a preliminary injunction and claims
18 in a consolidated trial in favor of an alcohol supplier based on the supplier’s “good cause” for
19 termination. *American Mart Corp. v. Joseph E. Seagram & Sons, Inc.*, 643 F. Supp. 44, 48 (D.
20 Nev. 1985). The Court noted that the supplier, Seagram, could lawfully terminate the distributor
21 if “good cause” existed under Nevada’s franchise laws. *Id.* at 48-49. The statute stated that “no
22 supplier shall unilaterally terminate ... any franchise with a wholesale dealer ... unless the
23 supplier has first established good cause for such termination.” *Id.* at 48. The Court also noted
24 that under the statute, “it is a complete defense for the supplier to prove that such termination ...
25 was done in good faith and for good cause.” The Court observed that Nevada law does “not
26 define good cause.” *Id.* The Court further noted that some states require the supplier to prove
27 “distributor misconduct or failure of performance.” *Id.* The distributor urged that the Court to
28 adopt that definition. *Id.* After reviewing the Nevada statute and case law, however, the Court

1 concluded that “good cause to terminate a franchise exists even where there is no distributor fault,
2 when in the *exercise of prudent business judgment* the supplier terminates the franchise for
3 grounds that *are truly legitimate and are not arbitrary, capricious, irrational, unreasonable or*
4 *irrelevant.*” *Id.*¹ Seagram, the supplier, terminated the distributor because it wanted to reduce
5 the number of distributors with which it worked to save money. Acknowledging the “Court has
6 no such expertise” in the alcohol industry, the Court declined the distributor’s invitation to second
7 guess Seagram’s good faith business judgment in deciding to terminate. *Id.* at 49.

8 The Legislature adopted this approach when it defined “good cause” by amendment to the
9 statute in 1995. Legislative History (“LH”) at p. 127. Wholesaler Distributors Association
10 Lobbyist, Harvey Whittemore, told the Legislature that the now-current version of the statute
11 would simply “codify and perhaps amplify” the holding of *American Mart*. LH at 16. Indeed, in
12 1995, the Legislature rejected a proposed definition that “‘Good cause’ must be determined solely
13 from the behavior of the wholesaler and does not relate to activities of the supplier even if those
14 activities are based on bona fide economic or business reasons.” LH at 127. Instead, “good
15 cause” includes a “failure by a wholesaler to comply substantially with *essential and reasonable*
16 *requirements* imposed on him or her by a supplier, or sought to be imposed by a supplier.” And
17 it still remains a “complete defense” to Crown’s statutory claim if Sierra Nevada terminated in
18 good faith and for good cause. NRS 597.180.

19 **B. The Supplier Need Not Send a Written Notice to the Distributor Detailing**
20 **Every Fact to Initiate the Termination**

21 Crown argues Nevada law requires Sierra Nevada to exhaustively list every fact
22 supporting termination in its termination notice and that Sierra Nevada cannot cite any facts it
23 uncovered after it sent Crown that notice. Crown is wrong on both accounts.

24 The supplier must send a notice to the distributor simply identifying “[t]he reason for the
25 proposed action and a description of any failure of the wholesaler to comply with the terms,
26 provisions and conditions of the franchise alleged by the supplier,” potentially including “[a]
27 statement that the wholesaler may correct any such failure within the period prescribed in NRS

28 ¹ All emphasis is added unless noted otherwise.

597.160.” NRS 597.155. This statute, however, does not require the supplier to list every fact in writing supporting its grounds for termination, let alone impliedly or expressly preclude the supplier from relying on grounds that it discovers after sending the notice. *See C.C.S. Chicago Recreation, Inc. v. American Suzuki Motor Corp.*, 1996 WL 99906, at *5 (N.D. Ill. Mar. 1, 1996) (“In determining whether good cause existed, the court is not limited to the reasons initially identified by the franchisor as cause for termination but may also consider ‘after acquired’ evidence of a franchisee’s misconduct or breach.”); *Tuf Racing Prods., Inc. v. American Suzuki Motor Corp.*, 1998 WL 299300, at *5 (N.D. Ill. June 3, 1998) (“there is nothing improper about allowing the franchisor to submit evidence of additional reasons for termination should they come to light *after* the initial notice.”).

Even in employment termination lawsuits courts find after-acquired evidence of wrongful conduct to be relevant and admissible: “The after-acquired evidence doctrine precludes or limits an employee from receiving remedies for wrongful discharge if the employer later discovers evidence of wrongdoing that would have led to the employee’s termination had the employer known of the misconduct.” *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1070-71 (9th Cir. 2004). *Id.*; *see also Van Asdale v. Int’l Game Tech.*, No. 3:04-CV-703-RAM, 2009 WL 4828708, at *9 (D. Nev. Dec. 8, 2009), *aff’d sub nom.* 549 F. App’x 611 (9th Cir. 2013). Indeed, the Supreme Court held that “[o]nce an employer learns about employee wrongdoing that would lead to a legitimate discharge, *we cannot require the employer to ignore the information, even if it is acquired during the course of discovery* in a suit against the employer and even if the information might have gone undiscovered absent the suit.” *McKennon v. Nashville Banner Publ. Co.*, 513 U.S. 352, 362 (1995).

C. The Distributor Has a Right to Cure Only Certain Grounds for Termination

The distributor generally has 60 days to “to correct any failure to comply with the terms, provisions and conditions of the franchise alleged by the supplier.” NRS 597.160(3). But consistent with the common law rule that a party need not entertain a “cure” where the problem is too serious to be curable, the statute also grants the supplier the right to terminate the distributor immediately when, for example, the distributor “[h]as had his or her *license to sell alcoholic*

1 **beverages** issued pursuant to state or federal law revoked or suspended for more than 31 days”;
 2 “[h]as committed fraud or has made a **material misrepresentation** in his or her dealings with the
 3 supplier or the products of the supplier”; or “any other person who has a financial interest in the
 4 wholesaler has: **Changed or attempted to change the beneficial ownership or control** of any
 5 such entity, unless the wholesaler **first notified the supplier in writing** and the supplier has not
 6 unreasonably withheld his or her **approval**.” NRS 597.155(2)(a)(f) and (j).

7 In addition, courts have the power to find that some wrongs are simply incurable. *See*,
 8 *L.K. Comstock & Co., Inc. v. United Eng’rs & Constructors, Inc.*, 880 F.2d 219, 232 (9th Cir.
 9 1999) (no requirement to entertain a cure because “[t]he law does not require a **useless act**,
 10 particularly where...it would **only enhance the actor’s loss**”); *Giuffre Hyundai, Ltd. v. Hyundai*
 11 *Motor Am.*, 756 F.3d 204, 208 (2d Cir. 2014) (no requirement to entertain a cure where
 12 fraudulent, **illegal** and deceptive trade practices are established as a matter of law, no right to cure
 13 is necessary prior to termination of the contract); *Allied Health Ass’n, Inc. v. Arthrocare Corp.*,
 14 2009 WL 1424509 at *9 (N.D. Cal. May 20, 2009) (*citing Rand Intern, Inc. v. LucasFilm Ltd.*,
 15 2008 WL 2987079, at *3 (N.D. Cal. Aug. 27, 2008) (a breach of contract which “threatens to do
 16 significant harm to the Licensor or its **commercial reputation**, may, in fact, render such breach
 17 incurable”)); *see* 2 Corbin on Contracts § 1266, p. 442 (C. Kaufman supp. 1984) (recognizing
 18 certain breaches are incurable even if there are notice and cure provisions). In short, Nevada law
 19 does not grant Crown a perpetual right to cure any problem, regardless of frequency or severity.²

20 **IV. FACTUAL BACKGROUND**

21 **A. Sierra Nevada’s Business**

22 Formed in 1980, Sierra Nevada is a Chico, California-based brewery specializing in the
 23 production of craft beer, which is a growing and highly competitive market segment. Sierra
 24 Nevada’s success is linked to the freshness and quality of its beer. To protect its brand, Sierra
 25 Nevada requires its distributors to perform to brand standards and quality standards. In regard to

26
 27 ² This Court may rely on out-of-state authority in determining Nevada law. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 58 (1996); *Hudson v. Horseshoe Club Operating Co.*, 112 Nev. 446, 456
 28 (1996) (“We consider the approach taken in Arizona and other jurisdictions persuasive”).

brand standards, Sierra Nevada wants its distributors to achieve a market position in terms of the location of its beer brand on store shelves (at eye level, e.g.) and the number of beer styles (porter, ale, wheat, e.g.), displays (end-caps in stores, e.g.), draft handles at bars, and marketing materials (neon lights, stickers, e.g.), each of which must be on par with Sierra Nevada's closest craft competitor in the market. Ex. L at 149:3-153:17. In terms of quality, Sierra Nevada requires its distributors to properly rotate and move its beer to avoid having OOC (i.e., old) beer in the market, which may taste bad, and clean draft lines every two weeks. Ex. B at 143:7-19, 150:9-13; Ex. V at 6. The industry experts both agree that Sierra Nevada's standards are market and drive sales. Ex. B at 143:7-19; Ex. V at 6.

Sierra Nevada is subject to the three-tier regulatory system that governs the distribution of alcohol throughout most of the US. Ex. V at 4. Sierra Nevada contracts with licensed distributors to sell its products to retailers in specified regions. *Id.* at 3. Distributors are thus the face of Sierra Nevada in their markets, ensuring its products reach consumers through retailers. *Id.* These retailers include grocery stores, convenience stores, restaurants, and entertainment venues. *Id.* Sierra Nevada places great value in its relationships with its distributors. *Id.*

B. Sierra Nevada and Crown's Relationship

In 1986, Sierra Nevada and Crown entered into the Sierra Nevada Distributor Agreement (the "Agreement"). Ex. 2.³ As the exclusive distributor in a large territory, Crown must, among other things, put forth its "best efforts" to promote the sale of Sierra Nevada's products "in an aggressive and diligent manner," cooperate with Sierra Nevada in "effectuating [its] promotions and merchandising programs," and "maintain prompt delivery service compatible with good business practice and the requirements of its customers," to be "no less prompt and effective than that of [Crown's] competitors." *Id.* at ¶ 2. Crown's competitors included, for example, New West, Morrey, Southern Wine & Spirits, and Breakthru. Ex. E at 231:23-232:3. To protect Sierra Nevada's brand, Sierra Nevada has the right to terminate Crown for certain breaches, including any conduct by Crown that damages Sierra Nevada's image. *Id.* at ¶¶ (3)(a)(iii), (3)(b)(iii).

³ Numerical exhibits refer to Crown's exhibits to its Motion to Preliminary Injunction (ECF No. 14). Sierra Nevada's exhibits contain alphabetical designations.

C. Crown's Long History of Problems

Sierra Nevada has long identified Crown as a problematic distributor and tried to resolve the problems posed by Crown's limitations and personalities. In the mid-2000s, for example, Sierra Nevada's former area representative, Nick Lundquist, would work around issues caused by Mr. Bond's problematic personality by going to Crown's then-owner, Lawrence Ginochio, to resolve problems. Ex. X at ¶ 2. As detailed below, Mr. Ginochio passed away in 2007 and placed the company's stock in trust, the majority of which the Bonds bought from his family members in 2014-2015 without the required approval from Sierra Nevada.

As shown in Section V.A., Sierra Nevada documented its problems with Crown and met with its management team to resolve them over the last several years. Because Crown had proven by October 2016 of being incapable of working professionally with Sierra Nevada and meeting its reasonable performance standards, Matt Foster, Sierra Nevada's director of sales, met with Mr. Bond to tell him that Sierra Nevada wanted Crown to sell its brand rights to another distributor. Ex. D at 273:14-274:23. Sierra Nevada sent a follow-up letter underscoring this point, which Crown incorrectly read as a "termination letter" to justify its rush to file this lawsuit. Ex. 4. Sierra Nevada offered Crown the opportunity to sell so it could profit from the brand rights. If Sierra Nevada simply terminated Crown for good cause, Crown would have had no marketable brand rights to sell. In response, Mr. Bond refused to sell and Crown sued Sierra Nevada, publicly alleging that it terminated Crown "without any justification whatsoever." ECF No. 1.

D. Sierra Nevada Terminates Crown's Agreement

On November 9, 2016, Sierra Nevada sent Crown notice of termination establishing six grounds for good cause to terminate the Agreement. Ex. 5. Sierra Nevada noted that Crown's past and on-going conduct included: "(1) submitting false and misleading accounting reports, including overbilling Sierra Nevada on depletion accounts; (2) failure to provide a competitive level of service drawing complaints from retailers; (3) failing to meet Sierra Nevada's brand standards; (4) failing to meet standards of performance on key brand building executables; (5) improper care and oversight of Sierra Nevada products, including improper refrigeration and failure to maintain within expiration parameters; and (6) abusive and unprofessional conduct,

1 including keeping guns at Crown's facility." *Id.* Sierra Nevada also indicated that it would
 2 "consider any cure that Crown proposes within the next 60 days," i.e., January 8, 2017. *Id.*

3 The parties met on November 15, 2016 to attempt to resolve these issues. Sierra Nevada
 4 detailed the deficiencies identified in its termination letter. Ex. D at 275:2-277:25. Crown falsely
 5 asserts that "Sierra Nevada conceded that most of the issues raised in the November 9 Letter had,
 6 indeed, been resolved and were not current." ECF No. 14 at 7. Mr. Bond, however, testified that
 7 numerous issues were raised at that meeting, including discussing brand standards, quality
 8 standards, OOC product, bill-back issues, in addition to his being an alcoholic, abusive, and
 9 aggressive. Ex. D at 275:8-277:25. And contrary to Crown's argument that Sierra Nevada
 10 sprung "new standards" on Crown, Sierra Nevada made clear that it simply implemented
 11 **regionally** a new process in October 2016 by which to measure the existing standards, which
 12 Crown always clearly understood. *Id.* at 276:19-22.

13 The next day, Crown wrote a letter proposing a single cure: that "Mr. Bond will no longer
 14 initiate communications (either verbal or written) with any of Sierra Nevada's employees or
 15 agents," with all direct communications going to Andy Dempsey (a new Crown sales manager) or
 16 Jaye Bond (who works in the front office). Ex. 6. Crown also proposed that if Sierra Nevada
 17 wanted to meet with Crown, Sierra Nevada must provide notice and Mr. Bond would not attend.
 18 *Id.* That lone cure (inadequately) addressed only Sierra Nevada's problems with Mr. Bond's
 19 unprofessional and threatening behavior. *Id.*

20 On November 28, 2016, Sierra Nevada responded to Crown's "cure proposal" explaining
 21 that it addressed **only one** of the six issues and that the single proposed cure failed to adequately
 22 remedy the problems caused by Mr. Bond's behavior. Ex. 8. Sierra Nevada noted that "Mr.
 23 Bond's drunken, aggressive behavior has persisted despite his promises to end it in response to
 24 Joe Whitney's September 8, 2014 letter, in which Sierra Nevada specifically asked Mr. Bond to
 25 end his unprofessional conduct and bullying." *Id.* Further, Sierra Nevada noted that "Mr. Bond
 26 also directed his aggressive and abusive behavior towards some of the market's key retailers,
 27 which reflects poorly on Sierra Nevada's brand image." *Id.* Crown responded on December 15,
 28

2016, repeating the same cure for Mr. Bond's conduct and denying (incredibly) that any of the other issues identified in Sierra Nevada's termination letter exist. Ex. A.

For the reasons identified below, Sierra Nevada rejected Crown's sole proposed cure and advances multiple good faith grounds to end its dysfunctional relationship with Crown.

V. SIERRA NEVADA HAD AMPLE "GOOD CAUSE" TO TERMINATE CROWN ON MANY GROUNDS AND CROWN OFFERED ONLY ONE INADEQUATE "CURE"

A. Crown Abused and Threatened Sierra Nevada Employees

Crown consistently failed to comply with Sierra Nevada's requirement that Crown provide a safe environment and act professionally. Ex. Z at ¶ 44; Exs. MMM-QQQ. Sierra Nevada received numerous reports from its Northern Nevada team that Mr. Bond had been drunk during work hours, physically threatened them, and swore at them. In September 2013, Mr. Day reported that he "[had] been disrespected on many occasions for many reasons by Paul and his wife Jaye," including being "poked at, yelled at, screamed at, threatened and verbally abused." Ex. WWW. As Mr. Day explained, he has "never had any issues like this with anyone else in the 25+ years that [he has] been in the business." *Id.* In August 2014, Mr. Day again reported that Mr. Bond "would go out of his way in order to make [Mr. Day] feel inferior," and become "verbally confrontational," causing Mr. Day to feel "intimidated to go into Crown for anything" due to Mr. Bond's "bullying." *Id.* Mr. Day noted that "Paul would only yell or bully me when I was alone without my superiors," but "[w]hen they were around, he would become the nicest person." *Id.* Mr. Day also reported that he would receive late evening phone calls from Mr. Bond, during which, "[i]n some cases, he could barely put words and sentences together." *Id.*

After Sierra Nevada promoted Mr. Day to regional manager, it hired Bryan Rosario in March 2013 to market its products in Northern Nevada and, by August 2014, he submitted his own complaints to HR about Mr. Bond's "verbal abuse and threats." Ex. XXX. Mr. Rosario worked for Crown for about four years, when Sierra Nevada secured Mr. Bond's approval to hire

1 him. *Id.*; Ex. D at 246:10-16. Mr. Rosario and Mr. Day both felt “very uncomfortable” because
 2 they knew that Mr. Bond had a gun in his office. Ex. XXX.⁴

3 These reports prompted Joe Whitney and Matt Foster to meet with the Bonds on
 4 September 5, 2014. In addition to calling out Crown’s performance, Mr. Whitney asked Mr.
 5 Bond about the bullying and berating of Sierra Nevada employees and about the presence of
 6 firearms. Ex. L at 46:13-48:12. Mr. Whitney recalled approaching this meeting with an open
 7 mind and left even more confident that Sierra Nevada’s complaints about Mr. Bond’s conduct and
 8 Crown’s performance were accurate, in part because the Bonds did not deny the very serious
 9 charges and committed to change moving forward. *Id.* Moreover, Sierra Nevada’s former area
 10 manager, Nick Lundquist, had previously informed him of Mr. Bond’s drunken and
 11 confrontational behavior. Ex. L at 113:9-20; Ex. X at ¶ 2.

12 Mr. Whitney recounted the substance of the September 5 meeting in his September 8 letter
 13 to the Bonds. He “recited numerous instances of [Mr. Bond] losing [his] temper during meetings,
 14 many of which after [he’s] allegedly been drinking during business hours.” Ex. 15. He recounted
 15 “harassment, threats and bullying tactics” and his “*team no longer feels safe in your building*
 16 *and that is disturbing*,” noting the presence of firearms. *Id.* To attempt to remedy the problem,
 17 Scott Robinson of Sierra Nevada and Mr. Day met with Mr. Bond a week later. As reflected in
 18 Mr. Robinson’s summary letter, Mr. Bond admitted that “the unprofessional behavior [Sierra
 19 Nevada’s] people have experienced from [him] at times ... included intimidation and verbal
 20 abuse.” Ex. UUU. Mr. Bond never disputed the accuracy of Sierra Nevada’s letter or email –
 21 until his deposition this year. Ex. D at 235:10-19, 238:6-12, 254:2-10.

22 ⁴ Crown has attempted to vilify Mr. Rosario, asserting, for example, without evidence that he
 23 manipulated Crown’s performance scores or conspired with management at Raley’s to undermine
 24 Crown because he is a “disgruntled” former employee. What is worse, shortly after gratuitously
 25 questioning Mr. Rosario about Facebook pictures of his wife and young children, Crown’s
 26 counsel asked him if he was involved in a “sexual relationship” with Mike Connelly. Ex. J at
 27 51:6-11. Mr. Connelly owns Sierra Tap House, which is the largest Sierra Nevada draft beer
 28 account in Nevada. Ex. D at 56:3-16; Ex. M at 41:8-11; Ex. N at 93:2-10. He has been critical of
 Crown’s performance for over 10 years. Ex. U at 11:6-17. To discredit him, Crown’s counsel
 has accused Mr. Connelly and Sierra Nevada of illegal acts such as providing free beer, even
 though Mr. Bond voluntarily participated in them by having Crown itself provide the beer (not
 Sierra Nevada) and testified that conduct was legal volume discounting to one of its largest
 customers. Ex. D at 66:17-67:1. Crown’s attempted tit-for-tat smear campaign has no boundaries
 or bearing on whether Sierra Nevada had good cause to terminate Crown.

1 Despite Mr. Bond's promise to behave, Sierra Nevada continued to experience problems
 2 with him (and, thus, Crown) in 2015 and 2016. Ex. 15; Ex. L at 208:4-8; Ex. ZZZ; Ex. Z. These
 3 issues came to a head in October 2016, when Mr. Rosario reported another incident of Mr.
 4 Bond's abusive conduct. Ex. J. at 82:11-14, 90:23-91:12, 96:13-18; Ex. RRR. Specifically, after
 5 a new product kickoff meeting with the Andy Dempsey and the rest of Crown's sales staff,
 6 Dempsey called Rosario into his office to discuss other issues. Ex. J. at 82:18-24. Bond later
 7 entered, looked down the hall in both directions to clear the area, and closed the door. *Id.* at 84:3-
 8 9. Without any evidence or logical basis, Bond accused Rosario of disclosing Crown's discount
 9 pricing to Raley's. Ex. RRR. Bond stood over a seated Rosario, screamed at him, and jabbed his
 10 finger in his face. Ex. J at 85:21-86:3. Rosario could smell alcohol on Bond's breath, which
 11 increased Rosario's concerns for his own safety. *Id.* Rosario immediately called his two
 12 supervisors and sent emails to document Bond's threatening behavior, including to Bond and
 13 Dempsey. *Id.* at 90:23-91:12; Ex. ZZZ; Ex. RRR; Ex. VVV. Neither of them responded to Mr.
 14 Rosario's email.

15 Mr. Bond has indisputably been drunk and belligerent to people. He admits to drinking
 16 beer and whiskey at Crown. Ex. D at 210:19-22; Ex. E at 214:15-19. Ms. Bond acknowledged
 17 that Mr. Bond drinks at work, but she untruthfully testified he limited his drinking to "one or two
 18 beers" on "Fridays after work." Ex. F at 90:23-92:11. However, Scott Hosford, Crown's sales
 19 manager from approximately 2005 to 2015, testified that he saw Mr. Bond drinking at work
 20 "[p]robably four or five times a week" and would start drinking as early as 3:30 in the afternoon.
 21 Ex. H at 172:25-173:2, 174:1-4. Mr. Hosford has heard Mr. Bond holler at people "I am going to
 22 make your ass bleed." Ex. H at 180:21-22. Mr. Dempsey admitted he heard Mr. Bond make
 23 racist jokes using the n-word, which Mr. Bond denied. Ex. G at 198:2-12. Sierra Nevada
 24 employees have witnessed this behavior from Mr. Bond as well. Ex. J. at 87:21-88:1; Ex. VVV;
 25 Ex. XXX. As noted in Section VI. A., many other people have also witnessed Mr. Bond go "off
 26 the wall."

27 Although Mr. Rosario cannot recall the exact timeline of when he saw which gun at
 28 Crown, he does recall some key facts. He recalls several meetings in Mr. Bond's office where he

1 had a rifle plainly visible, “lean[ed] up against a wall near his desk.” Ex. J. at 60:2-61:5. Mr.
 2 Day also saw a rifle in Bond’s office, which made him uncomfortable.⁵ Ex. I at 195:10-20.
 3 Rosario also recalls “a handgun that shoots shotgun shells,” which Bond referred to as “*the judge,*
 4 *jury, and executioner.*” Ex. J at 61:6-10. Bond admits that he possessed at Crown a gun called
 5 “the Judge” that shoots shotgun shells. Ex. D at 238:24-239:18. Bond also admits to keeping
 6 another pistol, a .38 caliber revolver, in his file cabinet. *Id.* at 240:24-241:6. He does not store
 7 his weaponry discretely at Crown, as other employees are aware of that gun’s presence. Ex. F. at
 8 86:25-87:4, Ex. G at 200:17-201:9. Indeed, Mr. Bond is the opposite of discrete, as Tim
 9 McGettigan, the regional vice president of sales from Pabst Brewing, testified that he heard that
 10 Bond carries a gun. Ex. S at 42:10-24. Finally, Bond admits to possessing firearms at Crown,
 11 both in his truck and in his office because he hunts and refurbishes guns. Ex. D. at 242:2-243:2.

12 **B. Crown’s Sole Proposed Cure Was Inadequate**

13 In response to Sierra Nevada’s complaints about Crown in Sierra Nevada’s November
 14 2016 termination letters and during its November 15 meeting, Crown steadfastly proposed only a
 15 single cure: that “Mr. Bond will no longer initiate communications (either verbal or written) with
 16 any of Sierra Nevada’s employees or agents,” with all direct communications going to Dempsey
 17 and Jaye Bond. Ex 6. And Sierra Nevada had to clear any visits to Crown so that Mr. Bond
 18 could go to his office to avoid contact. *Id.* Crown had only until **January 8, 2017** under NRS
 19 597.160(3) to fully execute its cure. Even if the Court were to ignore Sierra Nevada’s many other
 20 problems with Crown’s performance, its proposed cure to address Mr. Bond’s conduct fails.

21 Because he has an explosive temper, drinks at work, and keeps firearms there, the risk is
 22 simply too great to just trust that Mr. Bond would stay in his office, perhaps intoxicated, while
 23 Sierra Nevada meets with Crown’s sales team in the very nearby sales meeting room. Ex. F at
 24 190:15-19. Nor did Crown offer to ban firearms from its premises or excessive drinking. Having
 25 been informed of Crown’s dangerous situation and having seen no corrective actions, Sierra

26 ⁵ After Sierra Nevada’s witnesses testified about the presence of a rifle in Mr. Bond’s office,
 27 Crown people testified that he kept a “BB gun” in his office used to shoot pigeons. Ex. G at
 28 201:10-18; Ex. F at 88:11-17. When pressed for details about the BB-gun’s size and color, Mr.
 Dempsey initially testified that he did not know the size and the BB-gun was “gun colored.” Ex.
 G. at 203:13-22. Mr. Rosario and Mr. Day will testify that they saw a real rifle.

1 Nevada could potentially be liable if anything were to happen to one of its employees at Crown.
 2 For that reason, Sierra Nevada no longer sends its employees to Crown and the relationship has
 3 deteriorated even further. Ex. G at 144-145; Ex. Z at ¶ 50. As Crown noted, Sierra Nevada and
 4 Crown have a contract, not the Bonds. ECF No. 14 at 15:4-5. To address Sierra Nevada's
 5 legitimate concerns about safety and professionalism, Crown should have fired its president, Mr.
 6 Bond, but did not happen (probably because he owns and runs Crown). Crown's own expert has
 7 fired people for less. Ex. B at 282:22-283:10. Crown should have banned firearms and excessive
 8 drinking. Here, too, Crown's expert sees the dangers to the relationship posed by their presence
 9 in the workplace. Ex. B at 283:14-284:1, 261:12-22

10 Furthermore, because Mr. Bond runs Crown, Crown's proposal that Sierra Nevada
 11 communicate through Jaye Bond or Dempsey will not work. Ex. Z at ¶ 50. Ms. Bond has no
 12 sales experience and does not participate in sales, budgeting, marketing, or business plan
 13 meetings, which are *the critical* meetings during which Sierra Nevada and Crown collaboratively
 14 agree to their collective go-to-market strategies and goals. Ex. F at 9:7-8, 96:22-97:2, 98:10-
 15 25, 183:20-184:5, 187:16-188:5; Ex. G at 44:8-45:3; Ex. V. at 11. She has, in fact, never gone
 16 into the market. Ex. F at 15:3-4. While Crown's expert opined that Ms. Bond has "equal
 17 decision making authority," he admitted that he has no idea what she does at Crown. Ex. B. at
 18 355:14-16. She runs the front office tasks of beverage procurement and accounting. Ex. F at
 19 141:17. For his part, Mr. Dempsey is a relatively new sales manager with almost no managerial
 20 experience himself or authority to act on Crown's behalf. Ex. G. at p. 10:8-14:8. He runs almost
 21 everything through Mr. Bond. *Id.* at 10:3-5, 19:5-8, 44:19-45:3, 45:17-21, 56:10-15. Mr.
 22 Dempsey testified that Crown's "cure" plan was not ideal because "any time you have
 23 conversations that don't involve the, one of the owners of the company, there's, there's, I guess, a
 24 bit of lag time. And things need to be, at times, at time an answer is not as readily available as it
 25 could be." *Id.* at 122:15-25. Sierra Nevada already has problems with Mr. Dempsey's
 26 responsiveness, in part because he does not routinely check email or have email on his phone. *Id.*
 27 at 138:4-8. Nothing meaningful gets done at Crown without Paul Bond's approval.
 28

1 **VI. SIERRA NEVADA HAS ADDITIONAL “GOOD CAUSE” TO TERMINATE**
 2 **CROWN AND CROWN OFFERED NO “CURES”**

3 Crown proposed no cure whatsoever for its remaining problems. It simply denied they
 4 exist. In addition, the law provides no cure for a number of Crown’s additional problems.

5 **A. Mr. Bond’s Conduct and Crown’s Reputation Materially Impairs Sierra**
 6 **Nevada’s Brand**

7 In the exercise of its “sole judgment,” Sierra Nevada may immediately terminate the
 8 Distributor Agreement if Crown “has at any time done, or through the performance of any of its
 9 obligations under this Agreement has permitted to be done, any act or thing which in any way
 10 materially impairs (1) the Company name or the Product,” or “(2) Company’s image as a
 11 producer and distributor of quality beverage products.” Ex. 2 at § 3.b.iii.

12 Mr. Bond admitted that this provision is clear and reasonable because improper conduct
 13 would “hurt the [Sierra Nevada] image and slow sales.” Ex. D. at 207:5-24. A good brand image
 14 is important to the success of the brand. Ex. V, Ex. B. at 68:22-70:7. Similarly, it is vitally
 15 important for distributors to maintain good relationships with retailers. Ex. D. at 207:25-208:2;
 16 Ex. V. In fact, Crown’s own rebuttal expert, Bill Gialketsis, testified that retail relationships are
 17 “*everything*” because retailers determine whether distributors “live or die in the market.” Ex. B
 18 at 57:12-19. Crown’s own expert testified that he could not recall a single instance “*ever in your*
 19 *career at Bonanza or in the market generally*” when he heard “*someone in a management*
 20 *position at a distributorship cursed out a retailer.*” Ex. B at 64:4-10. He admitted that “a firing”
 21 may be in order for that conduct. *Id.* at 62:5-16. He certainly would not “tolerate” his people
 22 using profanity “toward anyone in the market.” *Id.* at 60:20-61:9. Even Mr. Bond agreed that the
 23 use of vulgarity in the trade could harm Sierra Nevada’s reputation. Ex. D at 208:6-9.

24 Mr. Bond has engaged in aggressive and profane conduct towards retailers and others in
 25 the market, harming Sierra Nevada’s brand. For example, Becky Denoyer managed Safeway’s
 26 liquor purchaser for all of Northern Nevada and part of Northern California for many years. She
 27 recounted one of Crown’s merchandisers parking in a handicap spot and simply sitting in his car
 28 for 30 to 45 minutes, at which time he then would drive off without doing his work inside the
 store. Ex. C at 25:19-26:1. She complained for several weeks before Cliff Kimmery, one of

1 Crown's two sales managers, showed her a log where she allegedly confirmed the merchandiser
 2 had been in the store. *Id.* at 26:6-10. She stated that Crown's employee had **forged** her signature.
 3 *Id.* at 26:11-12. She received a call from Mr. Bond a few days later, during which she told him
 4 what had happened and that she thought it was all handled by the sales manager. *Id.* at 26:13-17.
 5 In response, Mr. Bond got irate and called her either a "**fucking, lying bitch or a lying, fucking**
 6 **bitch.**" *Id.* at 26:18-27:11. She remembered that the call occurred before 1:00 p.m. and firmly
 7 believed Mr. Bond was drunk because he slurred his words. *Id.* at 27:12-28:4. She also heard in
 8 the trade that Mr. Bond "will pick up a 12-pack and take it back to the office, so usually by early
 9 afternoon it's kinda over" and he would "call[] people at night **just off the wall.**" *Id.* at 28:20-
 10 29:10. She heard Crown commonly referred to as "**Clown Beverages**" due to their below market
 11 performance. *Id.* at 28:14-19, 29:11-16. She also recounted that a former Crown employee told
 12 her that Mr. Bond referred to her generally as "the fucking cunt." *Id.* at 29:17-30:14.

13 Chris Kahl, an owner of Ole Bridge Pub and Brewer's Cabinet, had similar experiences
 14 with Crown and Mr. Bond. Specifically, Ole Bridge Pub had put in a big order for an upcoming
 15 event but Crown failed to deliver. Ex. Q at 57:1-14. With the event's kickoff fast approaching,
 16 Mr. Kahl decided that he would go to Crown with his manager to pick up the order. *Id.* After
 17 presenting his invoice, Crown's warehouseman shorted the order. *Id.* at 59:11-16. Mr. Bond
 18 informed Mr. Kahl that he could not get what he had ordered. *Id.* at 59:17-21. Mr. Kahl
 19 responded "if this is going to happen, we just won't be ordering as much." *Id.* at 59:22-23. Mr.
 20 Bond then "got really offended" and "was **really, really upset.**" *Id.* at 9:24-60:2. "It was one of
 21 those deals where **I didn't know if we were actually going to physically fight or not.**" *Id.* Mr.
 22 Bond aggressively closed on Mr. Kahl and screamed in his face. *Id.* at 60:8-61:15. As a direct
 23 result, he "**didn't order like we used to**" from Crown because "**I just really didn't want to deal**
 24 **this that. That whole – experience anymore.**" *Id.* at 62:10-19. Clearly Crown's conduct
 25 impacted brand sales. For his part, Mr. Bond denies the encounter occurred. Ex. D at 219:19-23.

26 Similarly, Matt Weaver, from Morrey Distributing, testified that Mr. Bond has the
 27 "reputation for drinking," meaning that "he drinks most of the day." Ex. T at 57:22-58:6. He
 28 also testified about an incident involving Mr. Bond's volatility at the major Brew HaHa Festival,

1 right after Crown had lost the Lagunitas beer brand. *Id.* at 25:22-26:3. Mr. Bond “walked up and
2 introduced himself and then **threw his business card in the Lagunitas rep’s face** and said I’m,
3 I’m the one you fucked. And then walked off. Well, I kind of walked him off.” *Id.* at 26:5-9.

4 Tim McGettigan of Pabst testified about similar experiences he has had with Mr. Bond.
5 He witnessed Mr. Bond’s explosive temper, indicating that “**at meetings that I’ve been in with**
6 **him, he – again, he’s just toxic – toxic behavior.**” Ex. S at 42:7-9, 17-24. He also had heard that
7 Mr. Bond “**carries a weapon.**” *Id.* at 42:10. When Pabst decided not to give Crown the popular
8 new drink *Not Your Father’s Root Beer*, Mr. McGettigan delivered the message to Mr. Bond not
9 at Crown’s facility but at the **Reno airport**, because it is “**very public area where I know there’s**
10 **security and, quite frankly law enforcement within earshot distance.**” *Id.* at 42:4-16. In
11 response, Mr. Bond “got up, pretty much stormed out of the – threw a couple dollars on the table
12 for his cup of coffee and stormed out of the room – or stormed out of the airport.” *Id.* at 41:23-
13 42:2. Mr. McGettigan testified that Crown is among the worst distributors of the 100s with which
14 he has worked. *Id.* at 21:11-24.

15 Bill Fehneman, an area sales manager covering Northern Nevada for Pabst, recalled that
16 over the last six years he has worked with Crown, he has experienced numerous instances of
17 hostile and unprofessional conduct by Mr. Bond. “For example, in response to my
18 communications regarding Crown’s performance issues to Mr. Bond, he would frequently use
19 profanity toward me and others around me in a **very aggressive, unprofessional manner.**” Ex.
20 W. He would also call “**late at night yelling and cursing at me,**” many times in what Mr.
21 Fehneman believed to be in an intoxicated state “because he would be **slurring his words.**” *Id.*
22 “[T]here was another time when I had a meeting at Crown where Mr. Bond got **extremely heated,**
23 **yelling and cursing at me,**” when “**Mr. Bond then aggressively stood up as if he were going to**
24 **physically confront me and moved into my personal space.**” *Id.* Mr. Fehneman left “**extremely**
25 **nervous** that Mr. Bond was going to following me out to my car since it is **widely known that Mr.**
26 **Bond keeps guns at Crown’s facility.**” *Id.* Mr. Fehneman noted that “Mr. Bond’s **explosive**
27 **temper** is particularly noticeable when he has been drinking or when the topic deals with **any**
28 **criticisms concerning Crown’s performance.**” *Id.* Because of Mr. Bond’s tight control over

1 Crown's operations, Mr. Fehneman has found it "*very difficult to work as a team to resolve*
 2 *problems and properly market Pabst's beer in Crown's territory.*" *Id.* "Because of the
 3 harassment and verbal abuse I have received, I feel *very uncomfortable* going into the Reno
 4 market, and Crown in particular, and try to keep my contact with Crown to a minimum." *Id.*
 5 Indeed, "Crown is *the worst distributor* with which I have worked," having never "experienced
 6 these types of issues, both in terms of frequency and severity, with other distributors." *Id.* at ¶ 6.

7 Crown's single proposed cure of stopping Mr. Bond from communicating directly with
 8 Sierra Nevada does nothing to correct the myriad of problems or reputational issues associated
 9 with Mr. Bond's unprofessional, vulgar, and abusive behavior. Mr. Bond is still the face of
 10 Crown, which is, in turn, still the face of Sierra Nevada in the market.

11 **B. Crown Failed to Provide Sierra Nevada Notices of Change in Ownership and**
 12 **Control as Required Under the Distributor Agreement and Nevada Law.**

13 The Agreement provides that "Distributor shall not assign or transfer this Agreement or
 14 any rights granted or obligations assumed hereunder, without the prior written consent of
 15 Company." Ex. 2 at §6. Under the contract, "any transfer of ownership or control (by share
 16 transfer, merger, consolidation, sale of assets or otherwise) of Distributor shall be deemed an
 17 assignment." *Id.* Mr. Bond understood that Crown was required to obtain prior written consent
 18 before transferring ownership or control of Crown. Ex. E at 135:15-136:3.

19 NRS 597.155 also provides that termination "becomes effective on the date the wholesaler
 20 receives the notice ... if the wholesaler: ... (j) Or any other person who has a financial interest in
 21 the wholesaler has: ... Changed or attempted to change the beneficial ownership or control of any
 22 such entity, unless the wholesaler first notified the supplier in writing and the supplier has not
 23 unreasonably withheld his or her approval." NRS 597.157(2). The statute makes clear that there
 24 is no right to cure by excluding the change of ownership or control provision from the 90-day
 25 notice requirement and right to cure provision of NRS 597.160. Specifically, subsection 1
 26 provides, "Except as otherwise provided in subsection 2," which contains the provision regarding
 27 transfer of ownership or control, a supplier must give notice at least 90 days before termination
 28 and an opportunity to cure pursuant to NRS 597.160. NRS 597.155(1). The statute recognizes

1 the supplier's important right to vet any potential change in its distributor's ownership or control.
2 Specifically, NRS 597.157 provides that "[a] supplier shall not *unreasonably withhold or delay*
3 *approval* of any assignment, sale or transfer of the stock of a wholesaler...."

4 Sierra Nevada learned through discovery that Crown violated its contractual and statutory
5 obligations to obtain approval from Sierra Nevada of any changes in ownership or control Crown.
6 First, in May 2007, the previous owner, Lawrence Ginochio, transferred the beneficial interest in
7 Crown into a trust and appointed Jaye Bond as the trustee of the trust without written notice to or
8 approval from Sierra Nevada. Ex. F at 18:10-14, 20:7-11, 25:8-12; Ex. D at 21:15-22; Ex. E at
9 143:9-14, 18:16-19:3, 134:1-12, 147:21-148:3. Crown will no doubt argue that it provided the
10 required notice through an unsigned letter that Mr. Ginochio allegedly sent to various suppliers in
11 May 2007. Ex. F at 26:18-27:2; Ex. E at 128:4-129:8, 125:24-126:5. Even if the draft, unsigned
12 letter from Crown's files were somehow admissible – it is not – it fails to provide any details
13 concerning the transfer of ownership and contains false information. For example, the draft letter
14 vaguely and falsely states that "Jaye Lynn Bond and Paul M. Bond will be *purchasing an*
15 *interest* in Crown." Ex. E at 137:25-138:3; 140:24-141:1 In fact, Sierra Nevada learned during
16 Ms. Bond's deposition that Mr. Ginochio transferred all of Crown's stock into a trust in 2007,
17 with her serving as the trustee and receiving as a beneficiary for *free* a 1/7 interest in Crown. Ex.
18 F at 20:7-21:11. Each of the other six beneficiaries was a Ginochio family member who inherited
19 his or her own 1/7 interest. *Id.* at 18:10-20:6; Ex. E at 140:12-141:1. Moreover, the letter
20 provides that there "will be no changes in the day-to-day operations; control; decisions or
21 management" of Crown, i.e., that Mr. Ginochio would continue to run Crown, not Paul Bond.
22 Ex. E at 138:19-23.

23 In January 2014, the Bonds became majority shareholders when they purchased 5/7
24 interests in Crown stock from Mr. Ginochio's children for only \$3 million, which they borrowed
25 from a bank and largely paid back. Ex. F at 22:10-17, 24:17-25:7; Ex. E at 158:9-159:7. Crown
26 transferred more fractional interests to the Bonds in 2015. While Crown may produce some
27 documents showing that Sierra Nevada employees may have loosely referred to the Bonds as
28 "owners," Crown indisputably failed to provide Sierra Nevada written notice of these significant

changes in ownership and control and Sierra Nevada never approved of these transactions. Ex. F at 25:13-16, 51:16-52:10, 28:25-29:15; Ex. E at 141:12-15. If the Bonds had approached Sierra Nevada in 2014 or 2015 to approve of their transaction to acquire majority ownership in Crown, Sierra Nevada would have *reasonably* disapproved. Instead, the Bonds quietly acquired majority ownership, enabling Mr. Bond to act without the possibility of being fired. The Court should find that Crown failed to comply with its duties to Sierra Nevada, which supports termination.

C. Crown Failed to Maintain Valid Licenses for Many Years and Failed to Inform Sierra Nevada of this Serious Failure

Nevada state law and Washoe County’s code require a person – including an owner or managing officer of a corporation – to be licensed before engaging in business as a wholesaler of alcohol beverages. The state defines a “wholesale dealer” or “wholesaler” as “a person licensed to sell liquor as it is originally packaged to retail liquor stores or to another licensed wholesaler, but not to sell to the consumer or general public.” NRS 369.130; 597.150. A person is prohibited from broadly “engaging in” beer wholesaler’s business in Nevada unless the person first obtains a license. *Id.* 369.180(1)(c), 369.181(2); 369.490(1)(b); *see also* Washoe Cnty. Code §§ 25.015(1); 25.4341, 30.110. Nevada law requires a corporate license applicant to list in its application personal information concerning its key officers, including the president and secretary (i.e., the positions held by Paul and Jaye Bond, respectively, from 2007-2012). NRS 369.190(2)(b)(2); Washoe Cnty. Code §§ 25.4342(2)(b)(2), 30.110; Ex. F at 18:3-9; Ex. D at 21:9-11. The rule enables the regulators to vet the applicant’s officers to confirm their qualifications to engage in an alcohol-related business. Washoe Cnty. Code § 25.023(2).

Similarly, the Agreement requires Crown to maintain all necessary licenses and permits Sierra Nevada to terminate if “***Distributor ceases to have in effect a valid Federal, state or local license***, permit or consent required or necessary for it to fully perform under this Agreement” or performs any act violating “***any Federal or state law, regardless of whether such violation is prosecuted.***” Ex. 2 at § 3(b)(ii)-(iii).

Sierra Nevada learned during discovery that from 2007, when Mr. Ginochio (Crown’s prior owner) passed away, until 2013, when Paul and Jaye Bond applied for a new license

disclosing their leadership positions at Crown, the Bonds were not licensed to sell beer. Ex. F at 18:8-19:4, 20:10-15; Ex. D 21:9-11, 44:24-46:11. Under state and county law, Crown's license under the Ginochios' ownership was not transferable to the Bonds. NRS 369.220(3); Washoe Cnty. Code §§ 25.021, 30.270(3). The Bonds did not apply for a new license in 2007 or otherwise notify the alcohol licensing authorities of Crown's personnel and ownership changes.

Instead, upon Mr. Ginochio's death, Crown continued operating "just like it always did." Ex. F at 20:7-9; Ex. E at 30:14-20, 37:1-11. Further, Mr. Bond admitted in his deposition that he knew Crown was required to be licensed and that Crown was obligated to know its licensing obligations. Ex. D. at 14:20-15:1, 48:22-49:11, 55:15-19; Ex. E at 149:23-150:11. Yet Crown lacked the required licenses from 2007 to 2013. Ex. SSS. Mr. Bond admitted that, at the time he submitted the application for the state and county approvals in 2013, Crown did not have the required state and Washoe County licenses in his name. Ex. D. at 45:2-14, 52:3-18. According to Mr. Bond, "*sometimes things went through the cracks.*" *Id.* at 47:19-20. But even after the Bonds learned that Crown was not properly licensed, they kept *illegally* ordering and selling Sierra Nevada beer in Nevada and kept their licensing problem hidden from Sierra Nevada despite Crown's contractual obligation to stay licensed and comply with the law. Ex. D at 47:2-6; Ex. E at 16:4-6, 20:22-25. The Court should find that Crown breached its contractual and statutory licensing duties to Sierra Nevada, which serves as a basis for termination.

D. Crown Falsely Billed Sierra Nevada

Nevada law permits a supplier to immediately terminate a wholesaler if the wholesaler "[h]as committed fraud or has made a *material misrepresentation* in his or her dealings with the supplier or the products of the supplier." NRS 597.155(2)(f). In 2013-2014, Sierra Nevada discovered that Crown had been systematically taking discounts from Sierra Nevada and not passing them onto retailers for several years but billing back Sierra Nevada as if Crown had passed them through. Ex. N at 20:1-12. This is systematic stealing, as it is industry standard to bill back a discount only if the distributor actually provides it to the retailer. Ex. B 222:2-7. Indeed, Crown's expert testified that his distributorship would not bill back discounts not passed onto retailers. *Id.* Sierra Nevada has never experienced this type of systematic

stealing with any other distributor. Ex. V at 15. For his part, Mr. Bond defiantly admitted that Crown’s practice was intentional—he “played it as a wash” to offset other costs Crown allegedly incurred. Ex. PPP. Sierra Nevada’s Joe Whitney and Matt Foster considered this practice a clear case of stealing and wished to terminate Crown. Ex. L at 118:22-120:4; Ex. M at 108:23-25; 113:2-10. The parties, however, agreed to continue the relationship after Crown paid back a portion of the stolen monies, but Sierra Nevada was forced to spend approximately \$100,000 on new software designed to prevent this from happening again. Ex. K at 125:15-126:9; Ex. V at 15. There are, however, still certain invoices that Crown must submit manually. *Id.* And Sierra Nevada continues to encounter issues with Crown’s submissions, including duplicate invoices, improper amounts, and inadequate documentation. *Id.* at 116:10-25, 120:9-18, 125:20-126:7, 132:16-21; Ex. QQQ. Sierra Nevada no longer trusts Crown to be diligent and honest, adding to the dysfunctionality of the relationship.

E. Crown Failed to Provide a Competitive Level of Service

The Agreement requires Crown to “exercise its *best efforts* to promote, sell and service” Sierra Nevada. Ex. 3 at ¶ 1. The Agreement also requires Crown to (1) “maintain prompt delivery service compatible with *good business practices* and the *requirements of its customers*, such *delivery service to be no less prompt and effective than that of Distributor’s competitors*”; (2) “promote the sale of the Product in the Territory in an aggressive and diligent manner, including, without limitation, causing its salesmen personally to call upon all customers in the Territory at customary intervals and maintaining inventories of the Product at all times (of all types) adequate to service the requirements and satisfy the demands of the market in the Territory”; and (3) “at all times cooperate with Company in effectuating Company’s promotions and merchandising programs in the Territory. ” Ex. 3 at ¶¶ 2(a)-(b), (d). Mr. Bond admitted that these terms are reasonable and essential to Sierra Nevada’s success. Ex. D at 30:11-23, 36:6-9, 98:10-99:17, 115:23-117:15. As part of these requirements, Sierra Nevada also requires its distributors to meet specified brand and quality standards. The brand standards are routinely communicated to distributors to ensure that they competitively promote Sierra Nevada. Ex. L at 149:3-153:7. The quality standards ensure that consumers receive fresh beer. Ex. E at 24:4-13;

Ex. D 175:25-176:8. Sierra Nevada requires all of its Nevada distributors to comply with these requirements. Ex. N at 67:3-68:3; Ex. M at 128:13-19; 130:3-12.

1. **Crown Failed to Adequately Service Off-Premise (Stores) and On-Premise (Bars, Restaurants) Accounts**

According to *its* expert, Crown should treat its relationships with retailers as if they decide whether “you live or die.” Ex. B at 57:12-19. But retailers consistently complained about Crown’s poor service levels, evidencing its failure to use its “best efforts” to promote the Sierra Nevada product, meet “the requirements of its customers,” and maintain “delivery service to be no less prompt and effective than that of Distributor’s competitors.” Ex. 3 at ¶¶ 2(a)-(b), (d).

For example, Sierra Nevada fields constant complaints about Crown’s service levels from Safeway, Wal-Mart, and Raley’s, which are three of the largest retailers in Crown’s market constituting approximately 20 percent of Sierra Nevada’s sales. Ex. Z at ¶¶ 3, 51; Exs. AA-ZZ. Safeway’s former liquor manager, Becky Denoyer, testified that Crown was the worst distributor with which she has ever worked and would grade its service level an “F.” Ex. C at 31:25-32:5; 31:13-23. She recounted that Crown placed displays in the wrong area, consistently set up displays that “weren’t eye appealing.” *Id.* at 34:2-16. She also testified that Crown placed inadequate blind orders,⁶ was the only distributor who would not provide credits for OOC beer or breakage, was not aggressive selling Sierra Nevada product, and even refused to provide Safeway with a new seasonal Sierra Nevada product because Crown still had inventory of a previous seasonal. *Id.* at 20:16-19; 21:8-22:15; 34:17-35:2. Wal-Mart’s market manager, Bruce Barlow, also complained of Crown’s orders and forecasts for deliveries as being “poor.” Ex. V at 9; Exs. AA, FF, GG, JJ, NN, PP, SS. Similarly, Joe Mowery a district team leader from Raley’s, testified that Crown was the worst distributor and identified issues with Crown’s inadequate delivery frequency, blind ordering, and “sad” display execution. Ex. R at 14:8-15:1, 93:10-94:6, 181:16-183:18, 186:19-21; Ex. KK, OO, ZZ. Retailers also referred to Crown as “Clown beverages” and

⁶ A blind order occurs when a distributor, like Crown, delivers beer to a store without visiting the store *the day before* the delivery to check on the store’s inventory levels. Blind orders lead to out-of-stock problems.

1 other insults in light of Crown's unsophisticated operation. Ex. C. at 28:14-19, 29:11-16; Ex. U
2 at 76:10-25.

3 On-premise accounts have experienced problems with Crown's services levels as well.
4 Sierra Tap House, for example, has long perceived Crown to be the weakest distributor and has
5 had delivery problems, including lying about order status. Exs. VV-WW. BJs Restaurant has had
6 issues with Crown's cleaning of draft lines, which, as a quality standard, Crown must do every
7 two weeks to keep the beer tasting fresh. Exs. CC-DD. Here, too, Crown has no written policy in
8 place and Sierra Nevada frequently spots dirty draft lines in the market. Exs. BB, MM.

9 Nevertheless, Crown argues that because Sierra Nevada's sales volume increased in 2014
10 and 2015, Crown must have adequately serviced retailers. ECF No. 14 at p. 16. This superficial
11 argument ignores that several other factors. First, the Sierra Nevada brand as a whole grew
12 during that time period and consistently performs better in Crown's territory owing to its
13 proximity to Sierra Nevada's Chico, California brewery. Ex. D at 173:10-22. Sierra Nevada is
14 practically a local beer in Crown's territory, which is seated in the Sierra Nevada mountains. Ex.
15 L at 140:2-23; Ex. D at 174:11-17. Moreover, Sierra Nevada is a strong craft brand on its own
16 and Reno is a strong craft beer market relative to other regions. Ex. D at 174:7-10. Second,
17 Sierra Nevada has paid to have sales representatives in Crown's market for many years. Mr.
18 Rosario, for example, has worked Crown's territory since 2013. He is routinely credited with the
19 success of the majority if not all of the major accounts in Crown's market. Ms. Denoyer of
20 Safeway testified that Rosario was "doing Crown's job" and that Sierra Nevada sales were "due
21 directly to Brian Rosario." Ex. C at 18:2-8, 35:12-36:3, 49:9-12. Mr. Mowery of Raley's
22 similarly testified that its increases in sales were attributable to Rosario, who presented a
23 marketing plan "all tied up with a bow and handed [it to] Crown." Ex. R at 201:13-202:7.
24 Likewise, at Wal-Mart, Rosario was a "selling machine" and secured "thousand-case displays,
25 which [was] 600 cases bigger than any else has ever sold." Ex. L at 183:15-184:6. His efforts
26 turned Crown's Wal-Mart locations into some of the highest selling locations nationwide. *Id.*
27 Crown's sales volumes could have been even been greater if it had achieved Sierra Nevada's
28

1 brand and quality standards and invested marketing dollars on the brand consistent with industry
2 standards. Ex. B at 259:3-18; Ex. P at 106:20-23.⁷

3 2. Crown Failed to Meet Quality Assurance Standards

4 Product quality is of the utmost importance to Sierra Nevada, as is the case with many
5 craft and other brands. Ex. V at 6. In fact, Crown's expert admitted that a failure to meet quality
6 assurance standards justifies termination. Ex. B at 123:17-20.

7 As mentioned above, Sierra Nevada requires distributors to meet certain quality standards
8 designed to ensure that consumers receive Sierra Nevada product as intended – fresh. Ex. E at
9 24:4-13; Ex. D 175:25-176:8. To do this, Sierra Nevada determines when products will no longer
10 have proper taste (generally 150 days after bottling), at which point the product becomes OOC
11 and Crown pull it from the market. Ex. O at 24:5-10. To avoid OOC product, distributors must
12 properly rotate product. Ex. B. at 150:9-13. It is industry standard for distributors to implement
13 written policies and systematic programs to avoid OOC product and ensure proper rotation. *See*
14 Ex. V at 10; Ex. T at 56:22-57:7; Ex. B at 36:20-38:17. Indeed, Crown's industry expert testified
15 that his Nevada distributorship, Bonanza Beverage, "constantly" audits delivery routes checking
16 for OOC product. Ex. B at 110:2-112:3. During the audit, Bonanza inspects "every account on
17 the route," and, at the conclusion, it generates a report of every instance of OOC product. *Id.* If
18 the salesperson receives a failing grade, Bonanza has a "progressive discipline" program in place
19 that ultimately results in termination after four failing grades. *Id.* at 42:3-17.

20 Sierra Nevada consistently found OOC product in Crown's market. Ex. N at 180:25-
21 182:14; Ex. Z at ¶ 30; Exs. AAA-EEE. Crown disingenuously contends in its motion that it
22 "worked diligently to reduce the presence of Sierra Nevada's products that are past Sierra
23 Nevada's expiration date" and "takes meticulous precautions to remove OOC products." ECF No.
24 14 at p. 20. Crown failed to identify any of its specific "meticulous precautions" because it has
25 none. Mr. Bond testified in his declaration that "Crown instituted a program where Crown's sales

26
27 ⁷ One of Sierra Nevada's primary competitors in Crown's market is Lagunitas. Ex. 1 at pp.
28 155:7-20. Lagunitas dropped Crown as its distributor in 2011 with anemic sells. Ex. T at 18:6-
11. In four years with a competitor distributor, Morrey, Lagunitas sales went from approximately
6,000 to over 100,000 cases in the region. *Id.*

managers and/or other administrative employees survey approximately 50 accounts on average per week.” Ex. 1 at ¶ 16. But Mr. Bond later admitted during his deposition that Crown reviews about only 70 of Crown’s 1,300 accounts a month, he does not review the reports, and Crown has no meaningful follow-up. Ex. D at 142:2-3. Mr. Dempsey admitted that reviewing 50 to 75 accounts a month was “more realistic.” Ex G at 85:4-15. But Crown’s own documents show even fewer inspections, as low as 32 *per month*. Ex. YYY. Crown’s expert admitted that visiting only 40 accounts a month was “light.” Ex. B at 317:2-15. While Crown may argue that it “instituted” a program, it has utterly failed to execute it and fix its OOC problem. Its citation to one “compliment” in September 2016, where Sierra Nevada merely “acknowledged Crown’s efforts in minimization OOC products” does not change this fact. Crown’s employees are, in fact, incentivized to leave OOC product in the market, because when they pull OOC product and return it to Crown, Mr. Bond docks their pay. Ex. D at 148:22-149:1. Sierra Nevada consistently found OOC product in Crown’s territory even after termination.⁸ Ex. Z at ¶ 30.

3. Crown Failed to Meet Brand Standards

Sierra Nevada requires its distributors to comply with certain brand standards, as summarized above, which ensure that it is competitively presented in the market. Ex. L at 149:3-153:17. These requirements are not only objective and clear, but are also commonly imposed on distributors by suppliers in the beer industry. Ex. B at 101:18-103:16; 314:7-13; Ex. E at 253:3-254:20, 260:413; Ex. V at 6-7.

Crown’s contentions that the brand standards are “entirely new” and “have yet to be even communicated to Crown” are false. ECF No. 14 at 16-17. Sierra Nevada consistently communicated these standards to Crown. Ex. E at 257:11-258:10; Ex. H at 14:9-13, 16-5-9; Ex. I at 153:23-154:6; Ex. M at 169:5-8; Ex. Z at ¶ 36; Exs. FFF-QQQ. In fact, the brand standards are even referenced in five of the exhibits cited by Crown in its motion. *See* Ex. 9 at p. 6; Ex. 13 at p. 13; Ex. 14 at p. 7; Ex. 20 at p. 8; Ex. 23 at p. 1. And while Sierra Nevada periodically changes

⁸ Crown may cite to certain historical documents where it scored better than other distributors on OOC beer (almost all from other regions, further from the brewery). But when Sierra Nevada approached other distributors to correct OOC problems, they resolved them immediately. Ex. N. at 181: 15-182:17. Crown has not, by contrast.

1 how it measures performance of the standards, the standards and their objective fundamentally
 2 remain the same. Ex. L at 150:1-53:9; Ex. M at 167:4-19; Ex. N 22:3-24:21, 184:2-18. For
 3 example, in October 2016, Sierra Nevada introduced a new system to measure brand standards.
 4 Ex. L at 151:23:-152:13; Ex. I at 153:6-15. This new system measured the presence of OOC
 5 product, which was already a part of Sierra Nevada's quality standards, distribution (measured by
 6 the number of bottle facings), display/features (measured by the number of cases present), and
 7 POS execution (measured by the number of POS material). Ex. N at 21:19-23, 184:2-18. For
 8 comparison, the previous system contained only one different metric: shelf-position, which
 9 required Sierra Nevada product to be placed at "eye level," and a slightly different metric for
 10 distribution, which a measured the number of skus (different styles) present rather than bottle
 11 facings. *See id.*; Ex. 13 at p. 13. The previous system implemented the same display and POS
 12 standards as the October 2016 system. Ex. N at 184:2-18; Ex. 13 at p. 13. And at the time of
 13 termination, Crown failed to meet any of Sierra Nevada's brand standards. *See* Exs. 5, 8. This,
 14 of course, was not a new issue for Crown. Ex. 14 at p. 7; Ex. 9 at p. 6; Ex. 20 at p. 8; Ex. 23.
 15 And Crown employees admitted that Sierra Nevada's standards are clear. Ex. E at 253:3-254:20,
 16 260:413; Ex. H at 31:21-32:13. Yet leading up to the termination, Crown consistently failed to
 17 meet its brand standards despite constant feedback from Sierra Nevada. Exs. 5, 8, 23. Crown's
 18 failure to meet brand standards evidences its absence of "best efforts," justifying Sierra Nevada's
 19 termination.

20 4. Crown's Denial of Poor Performance Rings Hollow

21 Several craft suppliers have outright ended or sought to end their relationships with Crown
 22 based on poor performance: Lagunitas, Alaskan Brewing Company, and Deschutes. Ex. E at
 23 118:21-119:16, 152:13-153:11. Crown has also poorly serviced Pabst, including by failing to
 24 ensure adequate stock levels of product and the constant presence of OOC product in the market.
 25 Ex. W. In response, Pabst awards new products to an entirely different distributor within
 26 Crown's region. Ex. S at 28:15-20.

27 Crown is the author of its own demise. Its leadership has no managerial education or
 28 training, and the face of Crown, Mr. Bond, has a reputation as a hot head and a "drinker." Ex. T

at 57:24-58:6; Ex. S 42:17-19. Crown has no meaningful written policies. It has minimal community involvement. Ex. V at 12-13. It even lacks a social media and internet presence, which its own expert admitted craft breweries value. Ex. V at 11-12; Ex. B at 330:9-18. Crown has a weak brand portfolio, which impacts its market penetration. Ex. V at 18-19. It undertakes minimal to no efforts to acquire new brands. Ex. E at 170:22-171:16. At bottom, Crown is not built to compete with other distributors, and, as a result, it cannot provide Sierra Nevada with a competitive level of service.

VII. CROWN CANNOT PREVAIL ON ITS IMPLIED CONTRACT CLAIMS

Crown failed to present *evidence* showing a likelihood of success on the merits of its remaining claims for contractual and tortious breach of good faith and fair dealing (Third & Fourth Claims). Breach of the covenant of good faith and fair dealing occurs when “one party to the contract *deliberately* countervenes the intention and spirit of the contract.” *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232 (1991). Obligations “implied” by the covenant, however, are “circumscribed by the purposes and express terms of the contract.” *Carma Developers, Inc. v. Marathon Dev. Cal., Inc.*, 2 Cal. 4th 342, 373 (1992). That is, “the implied covenant of good faith and fair dealing may not be used to imply a term that is contradicted by an express term of the contract.” *Kuiava v. Kwasniewski*, 126 Nev. 731 (2010) (citing *Kucharczyk v. Regents of Univ. of Cal.*, 946 F. Supp. 1419, 1432 (N.D. Cal. 1996)). Crown submitted no evidence that Sierra Nevada “deliberately” violated an “implied” contract term.

VIII. CROWN FAILED TO ESTABLISH IRREPARABLE HARM

Irreparable harm is harm for which there is no adequate legal remedy, such as an award of damages. *Backman v. Goggin*, 2016 WL 4577402 (D. Nev. Aug. 31, 2016). First, Crown admits that the loss of Sierra Nevada product creates merely a “risk” of irreparable harm – not actual immediate harm. ECF No. 15 at p. 18. Crown alleges that it will suffer “loss of client confidences,” “loss of profit,” “loss of market share, loss of reputation and good will, and loss of future business.” ECF No. 14 at p. 28. But the totality of Crown’s evidence that it will suffer this “harm” is Mr. Bond’s unsupported belief that (1) “Crown will suffer loss of goodwill and damage”; and (2) “customers will believe that Crown did something wrong in its performance of

the Sierra Nevada franchises.” Ex. 1 at ¶¶ 40-41; Ex. E at 83:1-6, 84:22-85:4. These conclusory statements that Crown would suffer “loss of reputation, competitiveness, and goodwill” are insufficient. *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). *Second*, Crown failed to show that monetary damages are inadequate. *Aurora World, Inc. v. Ty Inc.*, 719 F. Supp. 2d 1115, 1169 (C.D. Cal. 2009). Crown has already obtained an offer from another distributor to buy Sierra Nevada’s rights, which Crown contended reflects a fair market value for them. Ex. TTT. In that light, this Court should not issue an injunction “requiring the two parties to continue in perpetuity to do business with each other.” *O. M. Droney Beverage Co. v. Miller Brewing Co.*, 365 F. Supp. 1067, 1070 (D. Minn. 1973). In short, Crown fails to “adequately explain[] why monetary damages are not sufficient” *Id.*

IX. CONCLUSION

For the foregoing reasons, Sierra Nevada respectfully requests that the Court deny Crown’s motion. Sierra Nevada had ample “good cause” to end its dysfunctional relationship with Crown on November 9, 2016, based on its failure to perform several “essential and reasonable requirements” and other legal violations, and, even where Crown had a right to cure by January 8, 2017, Crown failed to do so. In accordance with *American Mart*, this Court should validate Sierra Nevada’s good faith business decision to part ways with Crown because the decision was not based on “arbitrary, capricious, irrational, unreasonable or irrelevant” factors.

Dated: April 27, 2017

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